

*American College of Preventive Medicine*

*Editor's Note: This position paper was mailed to President Clinton and members of Congress on August 26, 1997. Supporting the American College of Preventive Medicine's position are:*

Council of Preventive Medicine Residency Program  
Directors  
Aerospace Medical Association  
American College of Occupational and Environmental  
Medicine  
Association of Schools of Public Health  
Association of Teachers of Preventive Medicine

**T**he settlement reached between the state Attorneys General and the tobacco industry on June 20, 1997, contains substantial public health advances, unimaginable even a few years ago. Provisions for public health educa-

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## Position on the Agreement between the State Attorneys General and the Tobacco Industry

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tion, improved health warnings, and innovative financial penalties if tobacco use among children doesn't decrease are of special note. The settlement proposal includes very substantial industry concessions; concerns for weaknesses in the settlement should be seen in the context of considerable progress towards achieving critical public health goals, most especially reducing tobacco use primarily among young people but also in the adult population. Nonetheless, the public health and prevention community has been chastened by the disappointing results of prior negotiations with the tobacco industry and the industry's voluntary codes in the United States and other countries over tobacco advertising and promotion. It is therefore critical to approach the proposed settlement with caution and healthy skepticism while, at the same time, remaining cognizant of the substantial gains it represents.

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Nonetheless, the public health and prevention community has been chastened by the dis-

The American College of Preventive Medicine (ACPM), the national medical society of physicians whose primary interest and expertise are in disease prevention and health promotion, believes that the following criteria must be met in any settlement between the state Attorneys General and the tobacco industry:

- reduction of tobacco use primarily among youth as well as the adult population;
- economic incentives sufficient to change industry behavior to support reduction in youth smoking;
- full jurisdiction over tobacco products by the Food and Drug Administration
- commitment to international concerns;
- greatly increased advertising and promotion restrictions.

Having reviewed the proposed settlement and having participated actively in the Koop-Kessler Advisory Committee on Tobacco Policy and Public Health, ACPM supports a modified settlement agreement reflecting adherence to the criteria outlined above. A modified agreement offers an extremely important opportunity to substantially reduce tobacco use. In reaching this position of conditional support, ACPM has carefully examined the key questions of timing and likelihood of the current settlement leading to reduction in tobacco consumption, and has developed a list of essential modifications. Constructive changes to the proposed settlement strongly increase the likelihood of long-term progressive public health benefits. However, without stronger FDA provisions and increased penalties and without an absolute commitment to address international concerns, ACPM cannot support a settlement.

### Timing

ACPM has carefully examined whether or not a delay in reaching the settlement in order to further strengthen an agreement would be beneficial. Further disclosure of serious breach of public confidence is almost certain in the absence or presence of a settlement. However, more disclosures are only beneficial if they lead to better results from a public health viewpoint.

Victory in the first few Attorney General suits could increase leverage for a "better" settlement that might incorporate other improvements such as a total

ban on advertising and promotion and removing the severe constraints to effective FDA regulation of tobacco products.

However, victory in the trials is not assured, and a negative result in one or more of these could increase the bargaining power of the industry. A significant delay will lead to more children becoming addicted than if there is a settlement now that leads to reductions in tobacco use among youth in the near future.

Another potential advantage of waiting is the likelihood that loss of some of the state and class action suits will impair the financial viability of the tobacco companies, perhaps driving them to seek protection under Chapter 11. However, insofar as there are 46 million smokers in the United States addicted to tobacco products, demand will not be eliminated by industry bankruptcy. More important, this scenario will not provide funding for the public health anti-tobacco activities, many of which are of proven effectiveness in reducing tobacco consumption.

### Current Agreement

Even in the absence of needed changes in the agreement, it appears likely that a significant reduction in tobacco use would be achieved under the current settlement terms:

- The industry will have to significantly raise prices to pay for the settlement, and consumption is sensitive to price increases, with the greatest impact on youth. [See "Cigarette Taxes," *PHR 112;4:290-7.*]
- A well-funded enforcement campaign can lead to a reduction in smoking. Experience in California and Massachusetts has shown that a high intensity multi-media anti-tobacco campaign, particularly among adults but also among youth, does just that.
- The more stringent physical barriers to access, such as elimination of vending machines and the national licensing of vendors, are likely to reduce youth access to some degree.

More difficult to assess is whether the reduction in consumption is likely to continue and ultimately lead to a voluntary non-smoking society or whether progress will stop and reverse, with the incidence of new smokers rising, as it has in recent years. There is no guarantee of long-term success, however, under any settlement that permits the sale of tobacco products. Perpetual funding by the industry for media anti-tobacco campaigns, for anti-tobacco advocacy organizations, and for Federal, state, and local enforcement of FDA regulations increases confidence that progress can be sustained.

### Needed Changes

A serious concern for ACPM about the proposed settlement is the asymmetry that the principal tobacco industry goal of economic survival will definitely be achieved while attaining the public health goal of greatly reduced tobacco consumption is not assured. Reflecting the concern that public health and preventive medicine interests were not fully represented in the negotiations, ACPM recommends that the following changes and improvements must be sought to further increase public health benefits that can reasonably be expected from implementation of the settlement.

**FDA.** The Food and Drug Administration (FDA) must have the authority to regulate the manufacture, sale, labeling, distribution, and marketing of tobacco products. The current FDA requirements governing youth access and tobacco marketing are essential minimum components of any public policy initiative. The agency's ability to augment these requirements should not be curtailed. Barriers in the settlement to appropriate FDA rulemaking to reduce the harm of tobacco products should be removed so that they are in line with authority to regulate other devices or drugs. For example, the FDA should not have to make an *a priori* finding that a proposed reduction or elimination of an ingredient in tobacco products would not lead to an increase in contraband sales to be able to regulate that ingredient.

**Accountability.** Tobacco industry performance standards must be established in order to reach quantifiable objectives such as reducing the number of youths who smoke or numbers of new smokers. Strong financial penalties and/or other regulatory sanctions must guarantee the accountability of the tobacco industry's compliance to such objectives. The industry must be held accountable for meeting targets for youth reduction in tobacco use, starting in year 2 and increasing every year thereafter, instead of the settlement which proposes to reach such targets starting in year 5, followed by years 7 and 10.

Penalties for not meeting the reduction targets for youth smoking must be significantly increased and be paid in after-tax dollars. Penalty monies should be used to further reduce youth smoking. The settlement proposes penalties that would offset the future profits based on a teen tobacco user over the lifetime of the individual. The forgiveness provisions for the tobacco industry that could reduce these penalties by up to 75% must be eliminated. Funding should be included, to reimburse not only states for their smoking-related tobacco costs, but also jurisdictions and other municipalities that have

filed suit to recover costs for indigent care for tobacco-related illnesses.

**Advertising.** Advertising and promotion restrictions must be increased to provide for a total advertising ban covering all tobacco products. The current settlement bans only marketing targeted at youth. A significant concern with the current settlement agreement is to what degree clever and creative advertising and promotion that meet the letter of the settlement agreement could counteract the effectiveness of the other provisions of the settlement designed to reduce youth and adult tobacco use.

**International.** The United States cannot put itself in the position of exporting the tobacco problem to the rest of the world, nor can we allow the tobacco industry to simply shift its operations from this country to other countries. A well-funded international compact on tobacco must be developed to better disseminate information regarding the effects of tobacco use and to minimize international tobacco promotion and consumption. Strategies must be developed to assess how multinational companies can be held to the same standards internationally as national companies are in the United States. Some funds from the settlement must be allocated to international tobacco control efforts. The agreement does not address international issues.

**Public education and tobacco control.** A well-funded, effective, sustained public education and tobacco control campaign that is protected from political pressure is critical to reducing tobacco use. Only about 20% of the funds made available in the settlement appear to be earmarked for public health tobacco control-related initiatives. Tobacco use cessation programs should be made widely available, and coverage for such programs and services should be required under all health insurance, managed care, and employee benefit plans as well as all Federal health financing programs. The tobacco industry should financially support tobacco use cessation programs and services and research efforts related to the development of such programs and services. A higher proportion of the penalty funds must be allocated for the primary public health goal of progressively reducing tobacco consumption.

**Public disclosure.** While unclear in the proposed settlement, public disclosure must come from the tobacco industry about its knowledge of tobacco's effects on health, addiction, marketing to youth, environmental

tobacco smoke, and all other areas currently sought under pending litigation. Tobacco companies must be required to disclose to the public the products of combustion as well as the uncombusted products from which they arise.

**Environmental tobacco smoke.** Provisions in the settlement for virtual elimination of smoking in "public places," liberally defined, would help reduce some sources of environmental tobacco smoke (ETS). A significant exclusion is restaurants (other than fast food restaurants) and that must be remedied. It is further strongly recommended that economic incentives for smoke-free workplaces be developed, that Federal health agencies complete a risk assessment of the cardiovascular effects of ETS, and that a comprehensive public education and awareness campaign about the dangers of ETS be funded and implemented at all levels of government.

The American College of Preventive Medicine recommends to the Administration and the Congress that strengthening changes as outlined above be made to the existing proposed tobacco settlement. The Administration is further encouraged to lead a nationwide public education program about the strengths and weaknesses of the settlement in order to generate support among the American people for an improved agreement. An improved agreement, which meets the criteria outlined in this statement, will further public health goals and bring this nation closer to achieving substantial reduction in U.S. tobacco consumption and an appropriate leadership role in controlling international tobacco consumption.

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Members of the ACPM who reviewed the proposed settlement and developed the position statement are: Jonathan Fielding, MD, ACPM President, UCLA School of Public Health; George K. Anderson, MD, ACPM President-Elect, Koop Foundation; Michael Parkinson, MD, ACPM Secretary-Treasurer, U.S. Air Force; Leroy Gross, MD, ACPM Aerospace Medicine Regent, National Aeronautics & Space Agency; Robert Harmon, MD, ACPM General Preventive Medicine Regent, United HealthCare Corp.; Arthur L. Frank, MD, ACPM Occupational Medicine Regent, University of Texas Health Center at Tyler; C. William Keck, MD, ACPM Public Health Regent, Ohio Department of Health; Hugh H. Tilson, MD, ACPM Immediate Past President, Glaxo-Wellcome; Erica Frank, MD, ACPM Young Physician Regent, Emory University; Ronald M. Davis, MD, Henry Ford Health System; Thomas Houston, MD, AMA.